

In re) Fair Hearing No. 15,493
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Appeal of)

The petitioner appeals the closure by the Department of Social Welfare of his Vermont Health Access Program (VHAP) medical benefits. The issue is whether the petitioner's income is in excess of the program maximum. The facts are not in dispute.

1. The petitioner is a single man who has gross income from employment of \$924.50 a month. In September, 1997, he was found eligible for VHAP on the basis of this income.

2. In November, 1997, the petitioner also began receiving a monthly annuity payment of \$300. Upon reviewing the petitioner's eligibility for VHAP in April, 1998, after allowing a standard deduction from his earned income of \$90.00, the Department determined his countable monthly income to be \$1,134.50, which placed him over the protected income level of \$1,007 for one person.

3. The petitioner has high recurring medical and pharmaceutical expenses due to follow up treatment for cancer, which was diagnosed in September, 1997. He also has dental problems related to radiation treatments that need

attention. He does not dispute the Department's calculation of his income, but he takes issue with the lack of a provision in the regulations for a deduction from his income for his high medical expenses.

ORDER

The Department's decision is affirmed.

REASONS

Under the VHAP regulations gross earnings from employment and unearned income are considered in determining eligibility, and the only deductions allowed are for self-employment business expenses, a standard employment expense, and dependent care expenses. W.A.M. § 4001.81(c). The petitioner is not self-employed and he has no children. Therefore, the only deduction for him allowed in the regulations is the standard employment expense of \$90. Id. § 4001.81(e). This brings the petitioner's countable income to \$1,134.50 a month.

Under the current regulations (see W.A.M. § 4001.84) the maximum allowable income for one person is \$1,007 a month. Procedures Manual § 2420.

Unlike the Medicaid program, there is no provision in VHAP for a determination of "applied income" or a "spenddown", by which the incurring of a predetermined

amount of excess medical expenses within a six-month period can trigger eligibility at that point. The petitioner, who has high medical expenses and is only slightly over the income maximum, would certainly benefit from such a provision. At present, however, there is no provision in the VHAP regulations for the consideration of medical expenses as a deduction from gross income.¹

Inasmuch as the Department's determination in this case is in accord with the regulations, the Board is bound by law to affirm it. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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¹At the hearing, held on June 10, 1998, the petitioner was advised of his potential eligibility for general assistance (GA) if he is ever without the means to obtain necessary medical or pharmaceutical services.